

Electoral Amendment (Territory Representation) Act 2020

No. 127, 2020

An Act to amend the *Commonwealth Electoral Act 1918* in relation to the representation of the Territories in the House of Representatives, and for related purposes

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An Act to amend the *Commonwealth Electoral Act 1918* in relation to the representation of the Territories in the House of Representatives, and for related purposes

[*Assented to 15 December 2020*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Electoral Amendment (Territory Representation) Act 2020*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | A single day to be fixed by Proclamation.  However, if the provisions do not commence within the period of 2 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | 15 February 2021 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Commonwealth Electoral Act 1918

1 Subsection 4(1) (definition of *Australian Capital Territory*)

After “includes”, insert “(except in Part III)”.

2 Subsection 4(1) (at the end of the definition of *Australian Capital Territory*)

Add:

Note: For the definition of ***Australian Capital Territory*** in Part III, see section 38A.

3 Subsection 4(1) (definition of *Northern Territory*)

After “includes”, insert “(except in Part III)”.

4 Subsection 4(1) (at the end of the definition of *Northern Territory*)

Add:

Note: For the definition of ***Northern******Territory*** in Part III, see section 38A.

5 Subsection 4(1) (definition of *Territory*)

After “means”, insert “(except in Part III)”.

6 Subsection 4(1) (at the end of the definition of *Territory*)

Add:

Note: For the definition of ***Territory*** in Part III, see section 38A.

7 Paragraph 4(5)(a)

Omit “the Northern Territory”, substitute “a Territory to which section 55A does not apply”.

8 Subsection 4(5A)

Repeal the subsection.

9 Division 1AA of Part III (heading)

Omit “**Interpretation**”, substitute “**Preliminary**”.

10 Before section 38A

Insert:

38AA Simplified outline of this Part

This Part deals with how members and Senators are chosen for the Parliament, and related rules.

Division 1 deals with Senators for Queensland. These Senators are chosen by the people of Queensland voting as one electorate.

Division 2 deals with Senators for the Territories, setting out some rules relating to Senators of Territories (such as numbers of Senators, powers, privileges and immunities, and term of service).

Division 3 deals with representation of States and Territories in the House of Representatives. The number of members of the House of Representatives is based on the population of the Commonwealth, the States and the Territories, as determined by the Australian Statistician.

The number of members is worked out using a quota, which is the number of people of the Commonwealth (excluding the populations of Territories) divided by twice the number of Senators for the States. This produces a national average population for each member.

For States, the number of members is worked out by dividing the population which is worked out for the State by the quota (rounding up if the remainder is more than 0.5).

For Territories, the number of members is worked out the same way, except that the result is rounded using the harmonic mean. The harmonic mean is a method of rounding that improves proportionality and addresses under‑representation of Territories by minimising the gap between the average population per member in the Territories, compared with the national average population for the States (as measured by the quota).

11 Section 38A

Insert:

***harmonic mean*** has the meaning given by subsection 48(2AA).

***quota*** has the meaning given by paragraph 48(2)(a).

12 Section 47

Omit “(1) The”, substitute “The”.

13 Paragraph 47(1)(b)

Repeal the paragraph.

14 Subsection 47(2)

Repeal the subsection.

15 Paragraph 48(1)(b)

Omit “(2B), (2BA), (2C) and (2F)”, substitute “(2AA), (2B), (2BA) and (2C)”.

16 Before subsection 48(2)

Insert:

Determining number of members for States

17 Paragraph 48(2)(a)

Omit “quota”, substitute “***quota***”.

18 Before subsection 48(2A)

Insert:

Determining number of members for Territories

19 Subsection 48(2A)

Omit “(2B), (2BA), (2C) and (2F)”, substitute “(2AA), (2B), (2BA) and (2C)”.

20 Paragraph 48(2A)(b)

Omit “or equal to 1.5”, substitute “1”.

21 After paragraph 48(2A)(b)

Insert:

(ba) if the result of the division is 1 or more, and less than 3—that the number of members to be chosen for the Territory at a general election is the result of the division, rounding the result using the harmonic mean in accordance with subsection (2AA); or

22 At the end of subsection 48(2A)

Add:

Note: For the definition of ***Territory***, see section 38A.

23 After subsection 48(2A)

Insert:

Rounding using harmonic mean for Territories

(2AA) If paragraph (2A)(ba) applies in relation to a Territory, the result of the division under subsection (2A) is to be rounded up if the result is equal to orgreater than the amount worked out using the following formula (the ***harmonic mean***):

Start formula start fraction open bracket 2 times minimum number of members times minimum number plus 1 close bracket over open bracket minimum number of members plus minimum number plus 1 close bracket end fraction end formula

where:

***minimum number of members*** for a Territory means the number of members for the Territory worked out under subsection (2A) (disregarding any remainder).

***minimum number plus 1*** for a Territory means the minimum number of members for the Territory plus 1.

Minimum number of members for the Australian Capital Territory and Northern Territory

24 At the end of subsection 48(2B)

Add:

Note: For the definitions of ***Australian Capital Territory*** and ***Northern Territory***, see section 38A.

25 Before subsection 48(2BA)

Insert:

When no separate member for Norfolk Island is determined

26 Subsection 48(2BA)

Omit “Subject to subsection (2F), if”, substitute “If”.

27 Paragraph 48(2BA)(c)

Omit “subsection (2G)”, substitute “subsections (2B) and (2G)”.

28 Before subsection 48(2C)

Insert:

When no separate member for Cocos (Keeling) Islands or Christmas Island is determined

29 Subsection 48(2C)

Omit “Subject to subsection (2F), if”, substitute “If”.

30 Paragraph 48(2C)(e)

Omit “subsection (2G)”, substitute “subsections (2B) and (2G)”.

31 Subsections 48(2E) and (2F)

Repeal the subsections.

32 Application of amendment

The repeal of subsections 48(2E) and (2F) of the *Commonwealth Electoral Act 1918* made by this Schedule applies in relation to any determination made under subsection 48(1) or (2A) of that Act after the commencement of this Schedule.

33 Before subsection 48(2G)

Insert:

When determinations must be made

34 Subsection 48(2G)

Omit “, (2C)(e) and (2F)(c)”, substitute “and (2C)(e)”.

35 Before subsection 48(3)

Insert:

Decision final and conclusive

36 Before subsection 48(4)

Insert:

Determination to be in writing

37 Subsection 48(5)

Repeal the subsection.

38 Section 48A (heading)

Repeal the heading, substitute:

48A Setting aside 2020 determination in relation to the Northern Territory

39 Subsection 48A(1)

Omit “19 February 2003 (the ***2003 determination***) is set aside, on and from the day on which this section commences (the ***commencement day***)”, substitute “3 July 2020 (the ***2020 determination***) is set aside, on and from the day on which the *Electoral Amendment (Territory Representation) Act 2020* commences (the ***commencement day***)”.

40 Paragraph 48A(2)(a)

Omit “section 50”, substitute “sections 50 and 59”.

41 Paragraph 48A(2)(a)

Omit “2003 determination”, substitute “2020 determination”.

42 Subsection 48A(2) (notes 1 and 2)

Omit “2003 determination”, substitute “2020 determination”.

43 Subsection 48A(2) (note 2)

Omit “9 December 1999”, substitute “31 August 2017”.

44 Subsection 49(1) (note)

Omit “, (2C) or (2F)”, substitute “or (2C)”.

45 At the end of Division 3 of Part III

Add:

54A Review of this Division

(1) The Joint Standing Committee on Electoral Matters, or any other parliamentary committee determined in writing by the Minister, is to:

(a) review the operation of this Division as soon as practicable after the Electoral Commissioner makes the first determination under subsection 48(2A) for the Australian Capital Territory or the Northern Territory after this section commences; and

(b) report the Committee’s comments and recommendations to each House of the Parliament.

(2) The determination is not a legislative instrument.

46 Subsection 55(1) (definition of *average divisional enrolment*)

Omit “or the Australian Capital Territory”, substitute “, the Australian Capital Territory or the Northern Territory”.

47 Subsection 55(1)

Insert:

***redistribution quota*** has the meaning given by section 65.

48 Subsection 55(1) (definition of *Territory*)

Repeal the definition.

49 Section 55A

Repeal the section, substitute:

55A Application to Territories with 2 or more members

A reference in this Part to a State includes (except in section 59) a reference to a Territory that has 2 or more members to be chosen at a general election.

Note: Section 59 deals with times at which redistributions are to commence. Some other provisions expressly exclude the Australian Capital Territory (see subsection 62(3), and paragraphs 64(3)(a) and 69(5)(a)).

50 Section 56 (heading)

Omit “**and Australian Capital Territory**”.

51 Section 56

Omit “and the Australian Capital Territory”.

52 Paragraphs 58(1)(a) and (b)

Omit “and the Australian Capital Territory”.

53 Subsection 58(2)

Omit “and the Australian Capital Territory”.

54 Subsection 59(1)

Omit “or the Australian Capital Territory”, substitute “, the Australian Capital Territory or the Northern Territory”.

55 Before subsection 59(2)

Insert:

Redistributions of States

56 Before subsection 59(7)

Insert:

Redistributions of Australian Capital Territory or Northern Territory

57 Subsections 59(7), (8) and (9)

After “the Australian Capital Territory”, insert “or the Northern Territory”.

58 Paragraphs 59(9A)(a) and (9B)(a)

After “the Australian Capital Territory”, insert “or the Northern Territory”.

59 Before subsection 59(10)

Insert:

Interpretation

60 Subsections 59(10) and (11)

Omit “or the Australian Capital Territory”, substitute “, the Australian Capital Territory or the Northern Territory”.

61 Subsection 60(7A)

Repeal the subsection, substitute:

(7A) This section applies to the Australian Capital Territory as if a reference to an Australian Electoral Officer for the Australian Capital Territory were a reference to the member of the staff of the Electoral Commission appointed under subsection (7B).

62 Subsection 62(1)

Omit “or the Australian Capital Territory”.

63 Subsection 62(3)

After “State”, insert “(except the Australian Capital Territory)”.

64 Subsection 63(1)

Omit “or the Australian Capital Territory”.

65 Subsections 63A(1) and (3)

Omit “or Territory”.

66 Subsection 64(1)

Omit “or the Australian Capital Territory”.

67 Subsection 64(1)

Omit “or Territory” (wherever occurring).

68 Paragraph 64(3)(a)

After “of a State”, insert “(except the Australian Capital Territory)”.

69 Section 65 (heading)

Repeal the heading, substitute:

65 Redistribution quota

70 Subsection 65(1)

Omit “or the Australian Capital Territory”.

71 Subsection 65(1)

Omit “quota of electors for the State or Territory”, substitute “***redistribution quota*** for the State”.

72 Subsection 65(2)

Omit “quota of electors for a State or the Australian Capital Territory”, substitute “redistribution quota for a State”.

73 Subsection 65(2)

Omit “or Territory” (wherever occurring).

74 At the end of subsection 65(2)

Add:

Note: This section rounds the number of electors for a State or Territory. Section 48 rounds the number of members for a State or Territory (and the method of rounding for Territories under that section may be different).

75 Subsection 66(1)

Omit “or the Australian Capital Territory”.

76 Subsection 66(1)

Omit “or Territory”.

77 Subsection 66(2)

Omit “or Territory” (wherever occurring).

78 Paragraphs 66(3)(a) and (b)

Omit “or Territory” (wherever occurring).

79 Subsection 66(3)

Omit “quota of electors for the State or Territory”, substitute “redistribution quota for the State”.

80 Subsection 66(3)

Omit “the quota be”, substitute “the redistribution quota be”.

81 Sections 67 and 67A

Omit “or the Australian Capital Territory”.

82 Section 67A

Omit “or Territory”.

83 Subsection 68(1)

Omit “or the Australian Capital Territory”.

84 Subsection 68(1)

Omit “or Territory” (wherever occurring).

85 Paragraph 69(5)(a)

After “of a State”, insert “(except the Australian Capital Territory)”.

86 Subsection 70(1)

Omit “or the Australian Capital Territory”.

87 Subsection 70(1)

Omit “or Territory”.

88 Subsection 70(2)

Omit “or the Australian Capital Territory”.

89 Paragraph 70(2)(c)

Omit “or Territory”.

90 Subsection 70(3)

Omit “or the Australian Capital Territory”.

91 Subsection 70(4)

Omit “or Territory” (wherever occurring).

92 Subsections 71(1) and 72(1)

Omit “or the Australian Capital Territory”.

93 Subparagraph 72(3)(a)(i)

Omit “or Territory”.

94 Paragraph 72(10)(a)

Omit “or Territory”.

95 Section 73 (heading)

Omit “**or Australian Capital Territory**”.

96 Subsection 73(1)

Omit “or the Australian Capital Territory”.

97 Subsections 73(1) and (3)

Omit “or Territory” (wherever occurring).

98 Paragraphs 73(4)(a) and (b)

Omit “or Territory” (wherever occurring).

99 Subsection 73(4)

Omit “quota of electors for the State or Territory”, substitute “redistribution quota for the State”.

100 Subsection 73(4)

Omit “the quota be”, substitute “the redistribution quota be”.

101 Section 74

Omit “or the Australian Capital Territory”.

102 Subsection 75(1)

Omit “or the Australian Capital Territory”.

103 Subsection 75(1)

Omit “or Territory” (wherever occurring).

104 Paragraph 76(16A)(a)

Repeal the paragraph.

105 Section 76A

Repeal the section.

106 Subsection 77(1)

Omit “or the Australian Capital Territory” (wherever occurring).

107 Section 78

Omit “or the Australian Capital Territory” (wherever occurring).

108 Application of amendments

The amendments of Part IV of the *Commonwealth Electoral Act 1918* made by this Schedule apply in relation to any redistribution for the Australian Capital Territory or the Northern Territory that commences on or after the commencement of this Schedule.

109 Paragraph 79(1)(b)

Omit “the Northern Territory”, substitute “a Territory to which section 55A does not apply”.

110 Subsections 79(2) and (3)

Repeal the subsections, substitute:

(2) The Territory of Christmas Island and the Territory of Cocos (Keeling) Islands are each to be a District of the Division of the Northern Territory in which they are included (if applicable).

111 Paragraph 154(2)(h)

Omit “member”, substitute “members”.

112 Subsection 154(2A)

Repeal the subsection.

[*Minister’s second reading speech made in—*

*Senate on 2 December 2020*

*House of Representatives on 9 December 2020*]

(141/20)